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A-337-806
Third Administrative Review
POR: 07/01/04-06/30/2005
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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Third Antidumping Duty Administrative Review of Individually Quick Frozen Red Raspberries from Chile

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SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the third administrative review of individually quick frozen red raspberries from Chile. As a result of our analysis, we have made changes to the preliminary results. We recommend that you approve the positions in the "Discussion of Issues" section of this memorandum. Below is a complete list of the issues in this review for which we received comments and rebuttals from interested parties:

General Comments

Comment 1: Direct Material Valuation
Comment 2: Treatment of Sales Made Above Normal Value

Comments Relating to Santiago Comercio Exportaciones Exterior S.A.

Comment 3: Valuation of IQF-Quality Fresh Raspberries Used to Produce Non-whole Frozen Raspberry Products
Comment 4: By-product Cost Treatment for Other Non-whole Raspberry Products

Comment 5: Affiliated Processor's General and Administrative Expenses and Interest Expenses
Comment 6: General and Administrative Expenses Rate Calculation
Comment 7: Gain on Revaluation of Non-monetary Assets and Liabilities

Comments Relating to Arlavan S.A.

Comment 8: Application of Adverse Facts Available for Cost of Production of Arlavan's Non-Responsive Supplier

Comments Relating to Sociedad Agroindustrial Valle Frio Ltda./Agricola Framparque

Comment 9: Valle Frio's Packing Expenses
Comment 10: Valle Frio's Indirect Selling Expense Ratio
Comment 11: Wages and Professional Fees in Agricola Framparque's General and Administrative Expense Ratio
Comment 12: Valle Frio's Production Quantities
Comment 13: General and Administrative Expense Ratio Calculation

Comments Relating to Fruticola Olmue S.A.

Comment 14: Clerical Error Concerning Certain of Olmue's Credit Expenses

Comments Relating to Vital Berry Marketing S.A.

Comment 15: Clerical Errors Made by VBM
Comment 16: Clerical Error Made by the Department

BACKGROUND

On August 8, 2006, the Department of Commerce ("the Department") published in the Federal Register the preliminary results of the third administrative review of the antidumping duty order on individually quick frozen ("IQF") red raspberries from Chile.[1] The period of review ("POR") is July 1, 2004, through June 30, 2005. We invited interested parties to comment on the Preliminary Results.

On September 28, 2006, we extended the deadline for parties to submit comments on the Preliminary Results until October 17, 2006, and we extended the deadline for parties to submit rebuttal comments

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[1] See Notice of Preliminary Results of Antidumping Duty Administrative Review, Notice of Intent to Revoke in Part: Individually Quick Frozen Red Raspberries from Chile, 71 FR 45,000 (Aug. 8, 2006) (Preliminary Results).

until October 23, 2006.[2] We also informed the parties that the Department would accept comments relating to verification findings for Sociedad Agroindustrial Valle Frio Ltda. ("Valle Frio") and Agricola Framparque ("Framparque") seven days after issuance of the verification report, and that the Department would accept rebuttals to those comments five days later.

On October 17, 2006, the Department received case briefs filed by Pacific Northwest Berry Association, Lynden, Washington, and each of its individual members, Curt Maberry Farm; Enfield Farms, Inc.; Maberry Packing; and Rader Farms, Inc. (collectively, "the petitioners"); and the respondents, Arlavan S.A. ("Arlavan"), Fruticola Olmue S.A. ("Olmue"), Santiago Comercio Exterior Exportaciones S.A. ("SANCO"), Valle Frio, Valles Andinos S.A. ("Valles Andinos"), Vital Berry Marketing S.A. ("VBM"), and Alimentos Naturales Vitafoods S.A. ("Vitafoods"). On October 23, 2006, the petitioners, Arlavan, Olmue, VBM, Valle Frio, and Valles Andinos filed rebuttal briefs. On December 26, 2006, Valle Frio filed comments relating to the verification of Valle Frio and Framparque. We did not receive rebuttals to the December 26, 2006 comments.

DISCUSSION OF ISSUES

General Comments

Comment 1: Direct Material Valuation

Petitioners' Arguments: The petitioners argue that the Department should calculate a single raw material cost for all forms of IQF raspberries (i.e., whole, whole and broken ("W&B"), and crumble) regardless of the price paid and the quality of the raw material inputs. In particular, petitioners object to the direct material costs reported by Sanco, as well as to the material cost allocations proposed by Valles Andinos and Arlavan.

According to the petitioners, because none of the respondents can link the input fresh raspberries to the output products, the Department should not assign different fresh raspberry costs to different output products. The petitioners argue that it is the Department's longstanding practice to assign the same costs to control numbers ("CONNUMs") of different grades where the respondent uses the same inputs and same production process to manufacture those CONNUMs.[3] Citing to responses from

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[2] See Memorandum from Yasmin Bordas to File, "*3rd Administrative Review of Individually Quick Frozen Raspberries from Chile*," dated Sept. 28, 2006.

[3] See, e.g., Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, 67 FR 62112 (Oct. 3, 2002) and the accompanying Issues and Decision Memorandum at Comment 15; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Taiwan: Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 34658 (May 31, 2000) and the accompanying Issues and Decision Memorandum at Comment 6; Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 62 FR 38064, 38065-38066

Olmue, Valle Frio, Arlavan's responsive supplier, and Valles Andinos's two suppliers, petitioners assert that many of the respondents in this case agree that: 1) the different forms of IQF raspberries should have the same material costs; 2) although raw material inputs may have different qualities, all inputs are used to produce all forms of output; and 3) there is no basis to allocate one or the other raw material quality (IQF and block qualities) to any particular form of IQF output.

The petitioners point to Olmue's explanation in its September 11, 2006 response that block quality fresh raspberries are not designated as block because they are broken, but rather because they have more visual defects that make them less than perfect. In addition, petitioners claim that despite these defects, block inputs are whole, not broken, and can be used to manufacture Grade A whole IQF raspberries. The petitioners also note that fresh raspberries may flatten or squash but do not break except in the freezing tunnel. The petitioners state that if they do squash or flatten, they are considered pulp material and cannot be used for any IQF raspberry product. The petitioners assert that there is no bright-line distinction between IQF quality and block quality fresh raspberries and this is exemplified by the fact that all fresh raspberries arrive at the plant mixed together and enter the freezing tunnel together. The petitioners conclude that because no particular input can be traced to any particular output product, the Department should use only one average cost for the fresh raspberry input.

The petitioners assert that Olmue determined the overall price for raw materials purchased by sampling shipments of mixed fresh raspberries and estimating the percentages of IQF and block quality raspberries. The petitioners state that this pricing method provides incentives for the farmers to manage their farms better (e.g., harvesting more frequently, applying chemicals when required, etc.). However, petitioners assert that as Olmue noted, these are just purchasing and payment schemes, and should not be confused with what Olmue does with the fruit it received.

The petitioners assert that because SANCO does not maintain CONNUM-specific costs in the ordinary course of business, SANCO devised a way to allocate raw material costs to finished IQF products for response purposes. Moreover, petitioners state that SANCO revised its methodology several times during this segment. The petitioners assert that SANCO's most recent methodology, which was used in the Preliminary Results, distorts the costs because it employs assumptions that allocate costs away from non-whole IQF CONNUMs. The petitioners argue that there is no reason to believe that SANCO's experience, which used the same inputs and production processes as Olmue, is any different than Olmue's experience as described above. The petitioners conclude that the Department should calculate a single direct materials cost to eliminate the distortions to SANCO's whole, W&B, and crumble CONNUM costs.

The petitioners note that after the Preliminary Results, the Department sent out supplemental questionnaires requesting Olmue, Valle Frio, Valles Andinos's two suppliers, and Arlavan's responsive

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(July 16, 1997); and, Certain Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 32514, 32516 (June 6, 2006).

supplier to report a separate cost for each CONNUM. The petitioners point out that: 1) Valle Frio and Olmue did not adjust their costs; 2) Valles Andinos's two suppliers said that although they could not segregate the fresh raspberry cost for whole and non-whole CONNUMs, they could allocate the total direct materials cost based on the prices the suppliers charged to their customers for different CONNUMs; and, 3) Arlavan's supplier said that although it does not generally differentiate fresh raspberry purchases and that it pays a single price for the whole shipment, the company was able to find eight invoices where it paid different prices for IQF quality and block quality, and used those to allocate costs between its whole and non-whole CONNUMs.

The petitioners urge the Department to ignore Valles Andinos's and Arlavan's revised costs and continue using the average fresh raspberry costs as it did in the Preliminary Results because these companies do not differentiate costs for different output forms in their normal accounting records. The petitioners assert that Arlavan's supplier's cost allocation is based on a small, unrepresentative sample of its fresh raspberry purchases. Moreover, the petitioners contend that Arlavan's supplier has made no claim that its block inputs cannot be used to make whole IQF CONNUMs.

The petitioners assert that the value-based fresh raspberry cost allocation methodology suggested by Valles Andinos, as well as the methodologies proposed by Arlavan and Valles Andinos in their case briefs, distort the cost of production ("COP") and constructed value ("CV"). The petitioners argue that the Federal Circuit has rejected price-based cost allocations, noting that cost of production and price are two separate and independent measures of value under the statute, and the use of one to determine the other results in an unreasonable circular methodology. See Ipsco, Inc. v. United States, 965 F.2d 1056, 1061 (Fed. Cir. 1992) ("Ipsco"). The petitioners assert that the Department has similarly recognized that sales values are not typically appropriate for purposes of allocating cost because they do not necessarily reflect the actual factors that drive certain costs. See Stainless Steel Sheet and Strip in Coils from France: Notice of Final Determination of Sales at Less Than Fair Value, 64 FR 30820, 30840 (June 8, 1999) ("SSSS from France"). Therefore, according to petitioners, Valles Andinos's and Arlavan's suppliers' value-based cost allocation must also be rejected.

Valles Andinos's and Arlavan's Arguments: Valles Andinos and Arlavan claim that their suppliers charge more for IQF whole raspberries than for W&B or crumble IQF raspberries. Valles Andinos and Arlavan suggest that if the Department requires different costs for the fresh raspberry inputs, then the Department could use the different prices charged by their suppliers for the different finished products as the value basis for allocating fresh raspberry costs. Valles Andinos and Arlavan state that the Department was correct not to rely on the prices charged by their suppliers as costs, but they continue that the Department is not precluded from using the purchase prices for different forms of IQF raspberries to develop CONNUM-specific costs. Valles Andinos and Arlavan note that while Valles Andinos's suppliers have offered similar allocation methodologies (e.g., value-based allocations using the prices charged to the suppliers' customers for the finished products) and Arlavan's supplier has offered an alternative methodology in the supplemental responses, the approaches described in their case briefs are more appropriate because they relate directly to Valles Andinos's and Arlavans' purchases from their suppliers. Valles Andinos and Arlavan claim that their suggested methodology avoids the circularity issue of Ipsco because it is based on the prices charged to Valles Andinos and Arlavan by their suppliers and not the prices of the finished products to their customers.

SANCO's Arguments: SANCO states that the Department is correct to value the two distinct forms of fresh raspberries at the prices SANCO pays for them. SANCO asserts it purchases a different quality of fresh raspberries to produce whole IQF raspberries than what it purchases to produce non-whole IQF raspberries. SANCO asserts that it does not purchase its raspberries at one overall price. Rather, it pays separate prices for the two distinct qualities of fresh raspberries purchased. SANCO claims that each shipment is examined in order to determine the percentages of each quality of raspberries in the shipment, and the imperfections of lower quality raspberries are documented. SANCO argues that while petitioners rely on Olmue's submission to discuss this issue, petitioners cannot assume that Olmue and SANCO conduct business in the same way. SANCO states that block quality fresh raspberries are not suitable to produce whole frozen raspberries because they have defects (e.g., flattened, smashed, or somehow blemished) which render them unfit to be produced into grade A whole frozen raspberries. SANCO claims that the cases cited by the petitioners are irrelevant to the facts in this case because in those cases, different grades of products were produced with the identical raw material input. SANCO argues that it makes different frozen raspberry products from distinct qualities of fresh raspberries which distinguishes this case from those cited by petitioners.

Olmue's Arguments: Olmue asserts that the one average fresh raspberry cost that it used to calculate its cost of production is correct. Olmue asserts that all types of fresh raspberries, except for pulp, are used to produce whole, W&B, and crumble IQF raspberries. Olmue stresses that it would be wrong to conclude that only certain types of fresh raspberries are used to produce certain types of finished products.

Department's Position: In determining the appropriate cost methods to use, the statute directs the Department to look first to the books and records of a respondent. Section 773(f)(1)(A) of the Tariff Act of 1930, as amended ("the Act"), states that costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with generally accepted accounting principles ("GAAP") of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. While all respondents in this case take the quality of the fresh raspberries into account when negotiating the purchase terms,[4] none of them records different finished goods inventory values in its normal accounting records. Thus, the Department needs to ensure that the reported costs reasonably reflect the costs associated with the production and sale of the merchandise.

[4] See Supplemental Section D Response of Valle Frio (Sept. 25, 2006); Supplemental Section D Response of Olmue (Sept. 11, 2006); Supplemental Section D Response of Pehuenche (Aug. 30, 2006); Supplemental Section D Response of San Francisco (Aug. 30, 2006); Supplemental Section D Response of San Antonio (Aug. 30, 2006).

SANCO purchases all of its fresh raspberry inputs "with analysis." "With analysis" means that for each shipment, SANCO analyzes a sample to estimate the percentages of IQF-quality and block-quality fresh raspberries in that shipment. Additionally, SANCO documents the imperfections of lower quality raspberries. Even though only one invoice is prepared for each shipment of fresh raspberries, the price for each quality and the quantity of each is documented on the invoice. See Memorandum from Frederick W. Mines and Mark J. Todd, to Neal Halper, Director, Office of Accounting, "Re: Verification of the Cost Response of Santiago Comercio Exterior Sociedad Anonima in the Antidumping Review of Individually Quick Frozen Red Raspberries from Chile," dated July 6, 2006 ("SANCO's Cost Verification Report") at 20 and Exhibit 7. The Department stated in SANCO's Cost Verification Report, "(w)e noted that the invoices for raspberries show quantities of both whole quality and non-whole and their respective per-unit price." See SANCO's Cost Verification Report at 20. Therefore, given the quality differences of fresh raspberries purchased within each shipment, as well as the fact that SANCO documents the price differences between those qualities, we have continued to use the distinct material costs for each product as reported by SANCO prior to the Preliminary Results.

Regarding Arlavan's and Valles Andinos's suppliers' purchases, virtually all of their fresh raspberries are purchased at one average price for an entire shipment of fresh raspberries. See May 1, 2006, and May 24, 2006, Section D Questionnaire Responses from Valles Andinos's Suppliers at cost database; June 23, 2006, Supplemental Section D Questionnaire Response from Arlavan's Supplier at 3-4. However, that does not mean that the quality of the raspberries in the shipment is irrelevant when setting that shipment's price. See Aug. 30, 2006 Supplemental Section D Questionnaire Response from Valles Andinos's Suppliers at 1; Aug. 30, 2006 Supplemental Section D Questionnaire Response from Arlavan's Supplier at 1-2. In its August 30, 2006 response, Arlavan's supplier notes that it negotiates purchase prices with the farmers based on the quality of the fresh raspberries received, although it generally pays a single lump-sum price for the whole shipment. See Aug. 30, 2006, Supplemental Section D Questionnaire Response from Arlavan's Supplier at 1-2. As a result, most of this supplier's invoices do not distinguish the quantity by quality of the fresh raspberries in the shipment.

We note that both Arlavan's and Valles Andinos's suppliers have described their purchase and analysis methods similarly. The methods described by both have been termed the "barrido" method by other respondents. Under the barrido method, upon receipt at the plant, company personnel take samples of the shipment to calculate the percentage of fresh raspberries with no obvious defects, and, if the sample shows that a particular percentage will likely produce IQF whole raspberries, it pays the offered price. However, if the batch does not meet the percentage criteria, it rejects the fresh raspberries or negotiates to pay a lower price for the shipment. According to the responses, the quality inspection is only to ensure a minimum acceptable percentage of fresh raspberries with no obvious defects, but in all cases, if the batch is accepted, one average price is paid. See Aug. 30, 2006 Supplemental Section D Questionnaire Response from Valles Andinos's Suppliers at 1-2; Aug. 30, 2006, Supplemental Section D Questionnaire Response from Arlavan's Supplier at 1-2.

For purposes of these final results, we have continued to use the average cost as reported by each of Arlavan's and Valles Andinos' suppliers prior to the Preliminary Results because these companies pay one average price for each shipment. In the next review period, however, we intend to request further information from all respondents that would allow us to develop a uniform cost allocation methodology.

We agree with the petitioners that the value-based cost allocation methodology proposed by Valles Andinos and Arlavan is inappropriate. The Department has long recognized that a value-based cost allocation methodology is problematic in an antidumping context. See, e.g., Certain Softwood Lumber Products Final Determination of Sales at Less Than Fair Value, 67 FR 15539 (Apr. 2, 2002), and accompanying Issues and Decision Memorandum at Comment 4. The most obvious problem is the circularity of the analysis whereby prices are used to determine the product-specific costs which in turn are either compared to those same product-specific prices or are used to determine prices (i.e., through the sales-below-cost test and constructed value). Other market factors may also create problems with using prices as a basis of allocation, such as volatile market prices, temporary surges in supply and demand, and specific market preferences for specific products. In addition, the statute directs the Department to determine the actual cost to produce the merchandise under consideration and establishes that cost as a floor for the comparison prices. See section 773(b) of the Act. Thus, the use of a value-based cost allocation methodology is only appropriate in an antidumping context in very limited instances.

In summary, we have continued to rely on the direct material cost allocation methodologies that we used in the Preliminary Results for all companies.

Comment 2: Treatment of Sales Made Above Normal Value

Respondents' Arguments: The respondents, Arlavan, Olmue, Valle Frio, Valles Andinos, VBM, and Vitafoods, assert that the Department's practice of setting the respondent's negative margins to zero ("zeroing") in the calculations of overall dumping percentages violates a ruling made in April 2006 by the Appellate Body ("AB") of the World Trade Organization. According to the respondents, the AB found in United States - Laws, Regulations and Methodology for Calculating Dumping Margins, Report of the Appellate Body, WT/DS294/AB/R, (Apr. 18, 2006) (adopted May 9, 2006) ("U.S. - Zeroing (EC)"), that zeroing in administrative reviews is inconsistent with Article 9.3 of the Antidumping Agreement.[5] The respondents argue that the AB cited United States - Final Dumping Determination on Softwood Lumber from Canada, Appellate Body Report, WT/DS264/AB/R (Aug. 11, 2004) (adopted Aug. 31, 2004) ("U.S. - Softwood Lumber") to conclude that, under Article 2.1 of the Antidumping Agreement, the terms "dumping" and "margins of dumping" in Article VI of the GATT

[5] U.S. - Zeroing Appellate Body Report at paragraph 135.

1994 and the Antidumping Agreement apply to the product under investigation as a whole.[6] The respondents argue that, for the final results, the Department should recalculate the respondents' margins without using the practice of zeroing, because this practice is contrary to the international obligations of the United States.

Petitioners' Arguments: The petitioners assert that the Federal Circuit has affirmed the Department's zeroing methodology as a reasonable interpretation of the statute.[7] According to the petitioners, the Department's methodology is required by the statute, because failure to employ zeroing would mean that the different methodologies established at 19 U.S.C. 1677f-1(d)(1)(A)(i) and 19 U.S.C. 1677f-1(d)(1)(B) would necessarily produce the same result in every instance.[8] The petitioners contend that established rules require that an interpretation avoid rendering any provision of a statute meaningless or unnecessary.[9] Because 19 U.S.C. 1677f-1(d) is only relevant if dumping margins are calculated without the use of offsets, the statute requires the Department not to provide offsets for non-dumped sales.

The petitioners also claim that the Department has consistently held that WTO AB decisions regarding U.S. obligations under the Antidumping Agreement are entitled no deference, except as they are implemented through the procedures of section 129 of the URAA, 19 U.S.C. 3538. The petitioners argue that the Department has noted that under section 129, the implementation of the WTO report affects only the specific administrative determination that was the subject of the dispute before the WTO and has no bearing on this or any other antidumping duty proceeding. Accordingly, the petitioners contend that the Department should continue using the zeroing methodology for the margin calculations of these respondents.

Department's Position: Section 771 (35)(A) of the Act defines "dumping margin" as the "amount by which the normal value *exceeds* the export price and constructed export price of the subject merchandise." (Emphasis added). Commerce interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, Commerce will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The U.S. Court of Appeals for the Federal Circuit has held

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[6] U.S. - Zeroing Appellate Body Report at para 126, citing U.S. - Softwood Lumber V Appellate Body Report, paragraph 98.

[7] Timken Co. V. United States, 354 F.3d 1334, 1342-43 (Fed. Cir. 2004).

[8] The petitioners assert this proposition is demonstrated in the Comments of Skadden, Arps, Slate Meagher & Flom LLP on behalf of the United States Steel Corporation (Apr. 5, 2006), available at http://ia.ita.doc.gov/downoad/zeroing/cmts/ussc-zeroing-cmt.pdf.

[9] TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001).

that this is a reasonable interpretation of the statute. Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir.), cert. denied sub nom., Koyo Seiko Co. v. United States, 543 U.S. 976 (2004). See also Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (Jan. 9, 2006).

Respondent has cited two WTO dispute settlement reports finding the denial of offsets by the United States in specific administrative determinations to be inconsistent with the Antidumping Agreement. With respect to US – Softwood Lumber, consistent with section 129 of the URAA, the United States' implementation of that WTO report affected only the specific administrative determination that was the subject of the WTO dispute: the antidumping duty investigation of softwood lumber from Canada. See 19 U.S.C. 3538.

With respect to U.S. - Zeroing (EC), Commerce recently announced that it was modifying its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations. See Antidumping Proceedings: Calculation of the Weighted–Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (Dec. 27, 2006). In doing so, Commerce declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. See 71 FR at 77724. In addition, the United States has not yet gone through the statutorily mandated process of determining how to implement the report with respect to the specific administrative reviews that were subject to the U.S. - Zeroing (EC) dispute. See 19 U.S.C. 3538.

As such, the Appellate Body's reports in US – Softwood Lumber, and U.S. - Zeroing (EC Complainant) have no bearing on whether the Department's denial of offsets in this administrative determination is consistent with U.S. law. See Corus Staal, 395 F.3d at 1347-49; Timken, 354 F.3d at 1342. Accordingly, the Department has continued in this case to deny offsets to dumping based on export transactions that exceed normal value.

Comments Relating to Santiago Comercio Exportaciones Exterior S.A.

Comment 3: Valuation of IQF-Quality Fresh Raspberries Used to Produce Non-whole Frozen Raspberry Products

SANCO's Arguments: SANCO argues that the IQF-quality fresh raspberries which were used to produce non-whole frozen raspberries should be valued at the purchase price of non-whole quality fresh raspberries. SANCO argues that this methodology reflects a net realizable method of cost allocation. Citing E.I. Dupont De Nemours & Co. v. United States, 4 F. Supp. 2d 1248, 1251 (CIT 1998), SANCO argues that a net realizable value ("NRV") methodology is appropriate to allocate costs to joint products. SANCO states that it does not purchase IQF-quality fresh raspberries with the inent of producing non-whole products, but rather IQF-quality fresh raspberries become broken in the production process and must be used as input to SANCO's non-whole frozen products. Also, SANCO claims that it is appropriate to use an overall yield loss to calculate the quantity of the IQF-quality fresh raspberries used to produce non-whole products.

Petitioners' Arguments: The petitioners argue that the IQF-quality fresh raspberries which were used to produce non-whole products should be valued at the average per-unit purchase price of all types of fresh raspberries (see, Comment 1). The petitioners claim that SANCO's reliance on Dupont is misplaced. In Dupont, the petitioners argue, the material in question was recycled material inputs rather than purchased raw materials. In this case, SANCO purchased the fresh raspberry raw material. The petitioners point out that SANCO paid the IQF-quality price for the berries that were used to produce non-whole frozen raspberries. Also, petitioners point out that the respondent in Dupont used the NRV methodology in its normal books and records where SANCO does not. The petitioners continue that if the Department does not value SANCO's fresh raspberry purchases at the average price of all raspberries, the Department should reject SANCO's claimed NRV methodology and value the IQF-quality fresh raspberries SANCO used for non-whole production at the average price SANCO paid for the IQF-quality berries.

The petitioners also challenge SANCO's yield loss when calculating the quantity of IQF-quality fresh raspberries which were used to produce non-whole products. The petitioners believe that 100 percent of the IQF-quality fresh raspberries which were not used in whole raspberry products were used to make non-whole products. The petitioners provided a revised calculation of the quantity of whole-quality fresh raspberries which were used in non-whole production. The petitioners' calculation reflects the quantity of purchased IQF-quality fresh raspberries less the quantity of whole raspberry output, without regard to any yield loss.

Department's Position: SANCO purchased more IQF-quality fresh raspberries than it used in the production of whole frozen raspberries because a portion of the IQF-quality fresh raspberries were broken during the production process and became non-whole products or they did not meet the IQF quality of berry. See SANCO's January 19, 2006 Section D Supplemental Questionnaire Response at D-3 and SANCO's Cost Verification Report at 20. As such, it is appropriate to attribute a portion of these raspberry costs to non-whole raspberry production. The price which SANCO paid for fresh raspberries is based on the quality of fresh raspberries it purchases. See SANCO's Dec. 1, 2005 Section D Questionnaire Response at D-22. SANCO paid a higher price for IQF-quality fresh raspberries than it paid for block quality fresh raspberries. Id. Because a portion of the IQF-quality fresh raspberries was ultimately used to produce non-whole finished products, it is appropriate to value the fresh raspberries at the price SANCO paid for them. Therefore, we have continued to value the portion of the IQF-quality fresh raspberries used in the production of non-whole frozen raspberry products at the price SANCO paid for IQF-quality fresh raspberries.

We disagree with SANCO's citation of Dupont when arguing that its NRV was reasonable for valuing the IQF-quality fresh raspberries which were used to produce non-whole products. In Dupont, the respondent valued scrap which was reintroduced in the production process at the net realizable value.

Dupont, 4 F. Supp. 2d at 1251. Here, the material is not recycled scrap; it is purchased IQF-quality fresh raspberries. Additionally, we note that the methodology proposed by SANCO is not an NRV methodology; it is simply the substitution of the non IQF-quality purchase price for the actual purchase price paid for the fresh raspberries.

We disagree with petitioners that SANCO understated the quantity of IQF-quality fresh berries which were used to produce non-whole products. SANCO incurs one overall yield loss during the production process. See SANCO's January 19, 2006 Supplemental Section D Questionnaire Response at 5. All fresh raspberries undergo the same production process simultaneously which results in one yield loss for all fresh raspberries. Id. at 2. SANCO appropriately captured this yield loss by dividing the total purchases of fresh raspberries by the total output quantity of all raspberry products. See SANCO's March 21, 2006 Supplemental Section D Questionnaire Response at exhibit SD3-4. Because this yield loss relates to the production of all raspberry products, it is appropriate to calculate the quantity of IQF-quality fresh raspberries used in non-whole raspberry production by applying the overall yield loss to finished raspberry products.

Comment 4: By-product Cost Treatment for Other Non-whole Raspberry Products

Petitioners' Arguments: The petitioners argue that the purchase cost of all fresh raspberries should be allocated to only whole, W&B and crumble finished raspberry products, and that all other non-whole raspberry products produced should be treated as by-products and have no cost assigned to them. The petitioners claim that in SANCO's original response, SANCO stated that one of its other non-whole raspberry products is a by-product because SANCO is in the business of manufacturing whole raspberries and this product is an unintentional result of the production process. The petitioners also claim that the product yield obtained by comparing the quantity of fresh raspberry purchases with the quantity of raspberry-product output, which includes all other non-whole raspberry products, would be unreasonably high. The petitioners recalculated SANCO's yield loss by eliminating the production quantities of non-whole raspberry products that are not merchandise under consideration from the output against which the input quantities are compared. The petitioners encourage the Department to use this yield loss to recalculate SANCO's raw material cost.

SANCO's Arguments: SANCO claims that it reported its yield loss correctly by comparing the output quantity of all raspberry products to the input quantity of fresh raspberries. SANCO asserts that it sells all the other non-whole products which are not broken and crumbles, and that those products should not be treated as a yield loss. SANCO argues that the true yield loss is the portion of fresh raspberries which are lost in the production process and are not used for any of its products.

Department's Position: We disagree with the petitioners that the identified non-whole raspberry products should be treated as by-products of frozen raspberry production. In deciding whether to treat a product as a by-product or a co-product, we typically consider several factors. Among those factors are 1) how the company allocates and records these costs in the normal course of business, 2) the significance of the products relative to other joint products, 3) whether the products are an unavoidable consequence of producing the main product, 4) whether management intentionally controls the production of the products, and 5) whether the product requires significant further processing after the split-off point. See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil, 71 FR 2183 (January 13, 2006), and accompanying Issues and Decision Memorandum at Comment 7. In this case, the record is not clear regarding the last three factors and how they apply to the merchandise in question. However, with regard to the first two factors, which have been the most relevant factors in past cases, we find that the record supports a co-product treatment. Specifically, SANCO treats all non-whole raspberry products as main products in its normal accounting records (i.e., SANCO allocates full costs to these products in its normal books and records). See SANCO's Cost Verification Report at 16. Additionally, the total value of production for these products is not insignificant in relation to the value of production for all products produced from fresh raspberries. As such, we find it appropriate to treat the non-whole raspberry products in question as co-products to other non-whole products (W&B and crumbles). Therefore, for the final results, we have continued to treat these products as co-products and have assigned full costs to them.

Comment 5: Affiliated Processor's General and Administrative Expenses and Interest Expenses

SANCO's Arguments: In SANCO's submitted cost data file, raw material costs are based on the costs of fresh raspberries as incurred by SANCO, while the conversion costs are based on the processing costs as incurred by SANCO's affiliated frozen fruit processor Agroindustria Sagrada Familia Ltda ("ASF"). SANCO reported certain expenses of ASF for the POR as a variable overhead cost. SANCO claims that all of ASF's costs are production costs and none of them should be treated as either general and administrative ("G&A") or financial expenses. SANCO argues that applying separate G&A and financial expense rates to SANCO's conversion costs based on the costs incurred by ASF overstates ASF's cost of production. SANCO asserts that in prior segments, the Department never calculated separate G&A and financial expense rates based on ASF's costs and, for that reason, the Department should not change its methodology. Citing Shikoku Chemicals Corp. v. United States, 795 F. Supp. 417, 421 (CIT 1992), SANCO argues that the Department is forbidden to change its methodology in a subsequent review when the relevant facts remain unchanged from previous reviews. SANCO contends that ASF provides conversion services for SANCO only and incurs no G&A and financial expenses.

Petitioners' Arguments: The petitioners argue that the Department's adjustment at the Preliminary Results does not increase SANCO's reported G&A and financial expense by including ASF's G&A and financial expenses. The petitioners claim that ASF's G&A and financial expenses were merely moved from variable overhead and reallocated evenly across the direct labor, variable overhead, and fixed overhead fields. The petitioners state that the Department's failure to correct this inaccuracy in previous segments does not imply acceptance of the practice.

Department's Position: We agree with petitioners. ASF's 2004 financial statements show that the expenses at issue are G&A and financial expenses. See SANCO's October 27, 2005 Section A Questionnaire Response at Exhibit A-11. For the Preliminary Results, we adjusted SANCO's variable overhead, direct labor and fixed overhead by removing ASF's G&A and financial expenses from the variable overhead field. We then calculated G&A and financial expense rates based on ASF's 2004 financial statements and applied them to the direct labor, variable overhead, and fixed overhead fields. See Memorandum from Frederick W. Mines to Neal Halper, Director Office of Accounting, "Cost of Production and Constructed Value Adjustments for the Preliminary Results," dated July 31, 2006. It is the Department's longstanding practice to require respondents to report general and administrative expenses based on the fiscal year that most closely corresponds to the period of investigation ("POI") or POR. See Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review, 64 FR 13771, 13776 (Mar. 22, 1999). We disagree with SANCO that calculating separate amounts for ASF's G&A and financial expenses overstates ASF's cost of production. ASF is a separate entity from SANCO, has its own financial statements, and reports G&A and financial expenses on those financial statements. Those expenses were included in the calculation of the variable overhead field as SANCO reported it before the Preliminary Results. Our adjustment for the Preliminary Results only represents a reclassification of the expenses and the use of the fiscal year versus the POR amounts.

While the Department did not require the same methodology for ASF's reported costs in previous segments of this order, the methodology we incorporated in the Preliminary Results achieves a more accurate cost for SANCO and is consistent with the Department's longstanding practice. We disagree that the Shikoko ruling requires the Department to continue to apply an incorrect methodology in the calculation of a respondent's costs for the sake of being consistent from segment to segment. Notably, this is only the third administrative review of IQF Red Raspberries from Chile, and SANCO has not pointed to any record evidence of detrimental reliance on the Department's previous methodology. See, e.g., Sanyo Elec. Co. V. United States, 86 F. Supp. 2d 1232, 1243-44 (CIT 1999); NTN Bearing Corp. Of Am. v. United States, 905 F. Supp. 1083, 1095 (CIT 1995) ("In distinct contrast to the facts in Shikoko, this case concurs only the third administrative review and NTN does not point to any record evidence of detrimental reliance on Commerce's methodology in the investigation or previous reviews."). Therefore, for these final results, we have continued to apply the Department's normal methodology for calculating ASF's G&A and financial expenses.

Comment 6: General and Administrative Expense Rate Calculation

Petitioners' Arguments: The petitioners claim that a loss on investment and expenses related to antidumping proceedings should be included in SANCO's G&A rate because they relate to the overall operation of the company. Citing Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, and the U.K.: Final Results of Antidumping Duty Administrative Reviews and Partial Determination of Antidumping Administrative Reviews, 61 FR 66472, 66497 (Dec. 17, 1996) ("AFBs"), the petitioners argue that the Department normally includes investment losses in G&A expenses. Additionally, the petitioners claim that expenses related to antidumping proceedings should be included in G&A because SANCO offers no reason why these expenses should be excluded.

SANCO's Arguments: SANCO claims that the Department does not usually include unusual and extraordinary losses on investments in a company's G&A rate. In support of this position, SANCO cites Certain Frozen and Canned Warmwater Shrimp from Brazil: Final Determination of Sales at Less Than Fair Value, 69 FR 76910 (Dec. 23, 2004) and accompanying Issues and Decision Memorandum at Comment 8 ("Shrimp from Brazil"), where the Department excluded the loss associated with the sale of a shrimp farm because it did not relate to the general operations of the company as a whole. Moreover, SANCO claims that the loss arose in prior periods even though it was recognized in 2004. SANCO claims that the Department does not include losses from prior periods in the cost of production. To support this position, SANCO cites Certain Steel Concrete Reinforcing Bars From Turkey: Final Results, Rescission of Antidumping duty Administrative Review in Part, and Determination Not to Revoke in Part, 69 FR 64731 (Nov. 8, 2004), and accompanying Issues and Decision Memorandum at Comment 13 ("Rebar from Turkey"), where the Department did not adjust the respondent's G&A expense rate for prior period losses.

Citing to Certain Softwood Lumber Products from Canada: Final Results of Antidumping Duty Administrative Review, 70 FR 73437 (Dec. 12, 2005), and accompanying Issues and Decision Memorandum at Comment 11 ("Lumber from Canada"), SANCO states that the Department does not include legal fees related to antidumping-duty proceedings in the calculation of G&A rates.

Department's Position: While we agree with petitioners that in the cited AFBs segment, we included the loss on investment in G&A, reasoning that the loss related to the overall operations of the company, we have since changed our practice. Under our current practice, we exclude investment related gains, losses or expenses from the calculation of COP and CV. See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 26455, 26460 (May 5, 2006) (unchanged in final, 71 FR 65082 (Nov. 7, 2006); Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 68336, 68339 (Dec. 8, 2003) (unchanged in final, 69 FR 19388 (Apr. 13, 2004); and Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol From the Republic of Korea, 68 FR 13681, 13684 (Mar. 20, 2003). The reasoning, articulated in Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle From Canada, 64 FR 56739, 56758 (Oct. 21, 1999) is that, in calculating COP and CV, we seek to capture the cost of production of the foreign like product and subject merchandise, and to exclude the cost of investment activities.

SANCO compares the loss on the investment to a shrimp producer's sale of a shrimp farm in Shrimp from Brazil. We agree with SANCO that it is appropriate to exclude the investment loss from the G&A expense calculation on the basis that the loss did not relate to the general operations of the company. The Department does not include losses or gains on investments in G&A because they do not relate to the general operations of the company. Thus, SANCO's argument that the loss occurred in a prior period is irrelevant. We disagree, however, with SANCO's reasoning that the loss should be excluded on the basis that they are unusual or extraordinary. Whether the loss was unusual or extraordinary is also irrelevant; the losses should be excluded on the basis that they are investment related. Therefore, consistent with our practice in recent years, we have continued to exclude the loss on investment from the G&A expense calculation and from the calculation of COP and CV.

With regard to the exclusion of antidumping legal fees from SANCO's G&A, we agree with SANCO that it is the Department's practice to exclude antidumping legal fees from the cost calculation. The Court of International Trade ("CIT") affirmed the Department's practice of excluding antidumping legal fees from the cost calculation in Zenith Elecs. Corp. v. United States, 770 F. Supp. 648 (CIT 1991). The CIT reasoned that "the fundamental reason for not allowing the use of legal expenses which are related to antidumping legal proceedings is that the expenses of a party's participation in legal proceedings provided by law should not become an element in the decision of those self-same proceedings." Id. at 651. Accordingly, we have continued to exclude antidumping legal fees from SANCO's G&A.

Comment 7: Gain on Revaluation of Non-monetary Assets and Liabilities

Petitioners' Arguments: The petitioners urge the Department to recalculate SANCO and ASF's financial expense ratios to exclude the gains on revaluation of non-monetary assets and liabilities. The petitioners argue that it is the Department's practice to exclude gains and losses on non-monetary assets and non-monetary liabilities. The petitioners support this position by citing Certain Preserved Mushrooms from Chile: Final Determination of Sales at Less Than Fair Value, 63 FR 56613, 56621 (Oct. 22, 1998); Dynamic Random Access Memory from Korea: Final Results of Administrative Review, 66 FR 52097 (Oct. 12, 2001), and accompanying Issues and Decision Memorandum at Comment 1; and Hynix Semiconductor, Inc. v. United States, 424 F.3d 1363, 1373 (Fed. Cir. 2005). The petitioners suggest that the Department should recalculate SANCO and ASF's financial expense ratio by excluding the gains and losses on non-monetary assets and non-monetary liabilities, while at the same time including the revaluation of SANCO's capital accounts, which increases the financial expense.

SANCO's Arguments: SANCO argues that the Department accepted the monetary correction as an offset to SANCO's financial expense in previous segments of this proceeding and that the same facts remain for the current segment. Also, SANCO argues that the Department has accepted the monetary correction in the reported costs for other respondents in this case. SANCO claims that the statute requires the cost of production be based on the normal books and records of respondents if such records are kept in accordance with the GAAP of the exporting country, and reasonably reflect the costs associated with the production and sale of the merchandise under consideration. SANCO urges the Department to follow its methodology employed in prior segments of this case and to continue to allow the monetary correction as an offset to SANCO's financial expense.

Department's Position: We agree with SANCO. It is the Department's practice to account for the impact of inflation on net monetary position if those adjustments are made on the respondent's normal books and records kept in accordance with home country GAAP, provided that those adjustments do not distort the cost of production. See section 773(f)(1)(A) of the Act; Notice of Final Results of Antidumping Duty Administrative Review, Final Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile, 68 FR 6878 (Feb. 11, 2003), and accompanying Issues and Decision Memorandum at Comment 13. SANCO complies with Chilean GAAP by following the provisions of Bulletin Number 13 which require companies to account for the effects of inflation by recording a net monetary correction gain or loss on their financial statements. See SANCO's December 2, 2005 Questionnaire Response at D-13. As we do not consider it unreasonable to include the impact of inflation on the net monetary position of the company, we included the net gain in the reported costs. We note that the cases cited by the petitioners articulated the Department's outdated practices.

Comments Relating to Arlavan S.A.

Comment 8: Application of Adverse Facts Available of Cost of Production for Arlavan's Non-Responsive Supplier

Petitioners' Arguments: Citing the Preliminary Results, the petitioners assert that the Department's application of adverse facts available ("AFA") to the COP for Arlavan's unresponsive producer, DICAF Exportaciones Ltd. ("DICAF"), is flawed because the resulting cost increase was not adverse to Arlavan. The petitioners assert that the AFA rate used for DICAF did not cause any of Arlavan's home market sales to fall below cost. Moreover, the petitioners claim that the rate decreased Arlavan's antidumping duty margin below the level it would have been had the Department instead applied the neutral facts available ("FA") rate that was used for Arlavan's remaining producers.

The petitioners assert that this result does not further the purpose of the AFA provision because it creates an incentive by rewarding a party for its uncooperative behavior. The petitioners maintain that the Department has frequently stated that, when applying AFA, it will select a value that is sufficiently adverse as to effectuate the purpose of the facts available rule in a timely manner.[10] Furthermore, the petitioners argue that the SAA makes clear that the adverse inference must ensure that the party does

[10] Notice of Final Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China, 69 FR 24128, 24130 (May 3, 2004) ("Honey from China"). See also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (Feb. 23, 1998) ("Static RAMS from Taiwan").

not obtain a more favorable result by failing to cooperate than if it had cooperated fully.[11] The petitioners argue that the Department should select a cost for DICAF that results in a higher margin than the margin that would result from the application of neutral facts available.[12] In particular, the petitioners suggest the Department should use the single highest value reported by any respondent for each individual cost component. The petitioners maintain that this approach is consistent with Department practice in the AFA context, which is to generally select the highest individual costs, rather than an average of the three highest costs.[13]

Arlavan's Arguments: Arlavan contends that it would be unfair and unwarranted to penalize it to any greater degree for the failure of DICAF to respond to the Department's questionnaires for the following three reasons. First, Arlavan asserts the Department has applied an adverse inference to DICAF by calculating the simple average of the three highest COPs from any respondent and assigning this cost as a surrogate for DICAF's costs. Arlavan argues that the Department has repeatedly retained discretion in determining which information to use for an adverse inference.[14]

Second, Arlavan claims it had no control over DICAF's cooperation. Arlavan contends that the petitioners' argument fails to recognize that while a respondent can control its own decision to cooperate, a respondent cannot necessarily control an unaffiliated producer. Arlavan asserts that congressional intent cited by the petitioners cannot be interpreted as promoting punishment to parties that have no control over the targeted behavior. According to Arlavan, the fundamental premise of the incentive and deterrence system is that it can effect the intended goal – to change behavior. Therefore, Arlavan argues that the congressional intent invoked by the petitioners can only be understood to punish the party that has control over the targeted behavior, which in this case, is DICAF, which alone had control over its decision as to whether to fully cooperate.

Arlavan asserts that this interpretation is supported by CIT decisions and the Department. Referencing Mannesmannrohren-Werke AG & Mannesmann Pipe & Steel Corp. v. United States, 23 CIT 826 (CIT 1999), and Ferro Union v. United States, 44 F. Supp. 2d 1310 (CIT 1999), Arlavan asserts that the CIT emphasized that a party must be found not to have acted to the best of its ability before

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[11] Statement of Administrative Action ("SAA"), Uruguay Round Agreements Act, H.R. Doc. No. 103-316, at 870 (1994).

[12] See, e.g., Shrimp From Brazil, 69 FR 76910, 76912.

[13] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China, 61 FR 19026, 19043 (Apr. 30, 1996) ("Bicycles from China"); see also Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries From Chile, 69 FR 47869, 47871 (Aug. 6, 2004).

[14] See, e.g., NSK Ltd. v. United States, 346 F. Supp. 2d 1312 (CIT 2004); Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 34130 (June 18, 2004).

adverse facts available can be applied. Citing Ferro Union, Arlavan claims that the CIT has found that, "Significantly impeding the review is only sufficient grounds to warrant an application of facts available pursuant to 19 U.S.C. 1677e(a)(2)(C), and an additional finding that a party failed to comply to the best of its ability must be made to warrant an application of adverse facts available under 19 U.S.C. 1677e(b)." Citing Mannesmannrohren-Werke, Arlavan asserts that the CIT explained that mere failure to respond was not enough to trigger adverse facts available, and that 19 U.S.C. 1677e(b) prohibits Commerce from applying an adverse inference without a finding that Mannesmann had not acted to the best of its ability.[15] According to Arlavan, the CIT explained that a respondent can fail to respond because it was not able to obtain the requested information and that without further explanation, the Court will not infer that a respondent's failure to respond constitutes substantial evidence that it failed to cooperate to the best of its ability.[16]

Arlavan claims that the Department has reflected the CIT's emphasis on the "acted to the best of its ability" language in Brake Rotors From the People's Republic of China: Final Results of the Twelfth New Shipper Review, 71 FR 4112 (Jan. 25, 2006), and accompanying Issues and Decision Memorandum at Comment 1, in which the Department articulated that it must assess the extent of respondent's abilities, efforts, and cooperation in responding to a request for information and that compliance with the best of its ability standard is determined by assessing whether respondent has put forth its maximum effort to provide full and complete answers. Moreover, Arlavan points to Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997-1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review, 64 FR 61837 (Nov. 15, 1999), where the Department applied only partial adverse facts available to a respondent who Arlavan claims had acted even less to the best of its ability than Arlavan.

Arlavan argues that it was able to get written verification that DICAF's successor could not provide the requested information. Moreover, Arlavan asserts that DICAF went bankrupt and neither DICAF nor DICAF's successor are presently operating, further impeding Arlavan's efforts to obtain the information. Arlavan claims it attempted to the best of its abilities to have DICAF supply all of the information required, and Arlavan provides a detailed account of the actions it took to elicit a response from DICAF or DICAF's successor.[17]

Arlavan asserts that none of the decisions cited by the petitioners supports the implied assertion that a respondent should be punished even when that respondent has no control over the provision of the

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[15] Mannesmannrohren-Werke at 841.

[16] Id. at 842.

[17] See Response of Agroindustrial del Maule to the Department's Section D Questionnaire, dated May 1, 2006, at company cover letter page 2.

information. Arlavan cites numerous cases, including Honey from China, Static RAMS from Taiwan, and Shrimp from Brazil, and argues that these examples are evidence that the Department's use of AFA is to punish the party with control over the offending behavior. Arlavan claims that the decisions cited by the petitioners do not support the implied contention that resellers like Arlavan should be punished for unresponsiveness by their unaffiliated producers, regardless of the efforts made by Arlavan.

Department's Position: In the Preliminary Results, the Department applied an adverse inference with respect to COP data from one of Arlavan's selected suppliers, DICAF Exportaciones Ltd. ("DICAF")/Agroindustrial del Maule ("Agromaule").[18] For the remaining production of finished raspberries, the Department calculated a weighted-average COP using the COP of Arlavan's one responding producer (San Antonio) for purchases from San Antonio and all other producers for whom information was not requested. See Preliminary Results at 45003-04 and Arlavan Preliminary Results Calculation Memorandum at 10-11, dated July 31, 2006. The Department continues to find that an adverse inference is appropriate in light of DICAF/Agromaule's failure to provide a cost response.

Pursuant to section 776(a) of the Act, if necessary information is not available on the record, or an interested party (e.g., a producer of subject merchandise) withholds information that has been requested by the administering authority, the latter shall use facts otherwise available in reaching its determination. Further, pursuant to section 776(b) of the Act, if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting among the facts otherwise available. We stated our findings and reasons for resorting to the use of an adverse inference in our Preliminary Results. See Preliminary Results at 45007-08.

Contrary to the petitioners' assertion, it is not the Department's standard to ensure that an adverse inference causes the respondent's home market sales to fall below cost. More to the point, in this review, the Department did not draw an adverse inference against Arlavan. The Department found no uncooperative behavior from Arlavan. Instead, an adverse inference was applied to Arlavan's non-cooperative supplier, DICAF/Agromaule. This is consistent with the Department's application of adverse inferences to a supplier in circumstances similar to those presented in this case. See Notice of Final Results of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries from Chile, 70 FR 6618 (Feb. 8, 2005) and accompanying Issues and Decision Memorandum at Comment 3, in which a producer/supplier failed to cooperate to the best of its ability by not answering the questionnaire and the Department applied adverse inferences with respect to COP data from that producer/supplier. For the remaining production of finished raspberries, the Department based the COP on neutral facts available.

[18] Although DICAF and Agromaule are legally two separate entities, the products, services, and personnel, as well as contact information, were the same. Further, although separately incorporated, Agromaule has the same familial ownership as DICAF. We refer in the remainder of this memorandum to "DICAF/Agromaule." For additional explanation of company ownership, see Preliminary Results at 45004.

Although we have continued to apply an adverse inference to DICAF/Agromaule and not to Arlavan, we have changed our method of computing DICAF/Agromaule's estimated COP. In the Preliminary Results, as adverse facts available, we relied on a simple average of the three highest costs for each CONNUM. While it is our practice in applying an adverse inference to COP to use the highest costs on the record of the review, we were concerned that relying on the single highest cost or the highest two reported costs would compromise the cooperating suppliers' BPI data. As a result, we relied on the highest three. However, in re-evaluating the methodology, we believe it is appropriate to rely on the two highest costs reported per CONNUM, but apply a weighted rather than simple average. This methodology better reflects our preference to use the highest cost on the record of the review, while still protecting BPI data submitted by participating respondents. Moreover, after reviewing the methodology used in the Preliminary Results, we also realized that methodology resulted in the use of costs from different suppliers for the various CONNUMs which could distort the DIFMER adjustment. We disagree with the petitioners that we should use the highest reported cost for each single element of COP. A patchwork approach such as this is nonsensical. Moreover, we find that the result of our calculation using the methodology outlined above is sufficiently adverse to effect the purpose of the AFA provision.

Comments Relating to Sociedad Agroindustrial Valle Frio Ltda./Agricola Framparque

Comment 9: Valle Frio's Packing Expenses

Petitioners' Arguments: The petitioners argue that the Department should use Valle Frio's revised packing expenses for third county sales as submitted in the March 8, 2006, supplemental questionnaire response at Exhibit SS-13. According to the petitioners, the U.S. sales database submitted on March 8, 2006, correctly included the revised packing expense values, however, the third county market sales database did not.

Valle Frio's Arguments: Valle Frio states that it inadvertently failed to revise its third country market packing expenses. Valle Frio argues that the Department should use the verified packing costs for both the U.S. and third country market sales.

Department's Position: We agree with respondents. Valle Frio submitted its revised packing expenses in its March 8, 2006 supplemental questionnaire response. However, because third country market merchandise was produced and packed by Framparque, the third country market packing costs were incurred by Framparque, not Valle Frio. At the beginning of the cost verification, Framparque provided a revised per-unit packing expense. See "Verification of the Cost Response of Valle Frio in the 2004-2005 Administrative Review of the Antidumping Duty Order of Individually Quick Frozen Raspberries from Chile," dated Dec. 18, 2006 ("Valle Frio Cost Verification Report"). Therefore, for these final results, we have used the revised and verified packing expenses. See Cost of Production and Constructed Value Calculation Adjustments for the Final Results - Sociedad Agroindustrial Valle

Frio Ltda./ Agricola Framparque, dated Feb. 5, 2007 ("Valle Frio and Framparque Cost Calculation Memorandum").

Comment 10: Valle Frio's Indirect Selling Expense Ratio

Petitioners' Arguments: The petitioners argue that the Department should disallow Valle Frio's deduction from G&A expenses for indirect selling expenses ("ISEs") because Valle Frio failed to respond to the Department's questions concerning Valle Frio's estimated ISE ratio. Petitioners state that Valle Frio did not identify the G&A line items which relate to selling activities, nor did Valle Frio substantiate its estimated percentage for each G&A line item related to selling. The petitioners claim that Valle Frio does not engage in any substantial sales activities, and employs an unaffiliated selling agent who handles its selling activities. Therefore, petitioners conclude that any sales activities performed at Valle Frio's "Administrative Headquarters" are *de minimis*.

Valle Frio's Arguments: Valle Frio claims that its estimated ISE ratio is reasonable because it did not have specific selling areas or employees in charge of sales. Therefore, Valle Frio states that it did not have sufficient records to calculate the precise share of ISEs in G&A or to identify G&A lines to a degree that would separate ISEs from G&A expenses. In support of this position, Valle Frio cites to the Issues and Decision Memorandum accompanying Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada, 68 FR 52741, 52745 (Sept. 5, 2003) at Comment 35; and the Issues and Decision Memorandum accompanying Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea, 56 FR 16305 (Apr. 22, 1991) at Comment 29.

Department's Position: We agree with the respondents, in part. Valle Frio was unable to identify the POR ISEs due to the lack of specificity in its accounting system and because it could not sufficiently segregate the administrative, selling and managerial duties performed by its administrative staff and management. See March 8, 2006 supplemental questionnaire response at 6-7 and Exhibit SS-12; April 13, 2006 supplemental questionnaire response at 20. Instead, Valle Frio estimated, based on its past experience, a percentage of its total G&A expenses which was attributable to selling functions. See March 8, 2006 supplemental questionnaire response at 6-7 and Exhibit SS-12; April 13, 2006 supplemental questionnaire response at 20. Based on our findings at the cost verification, it appears that the reported allocation percentage slightly overstates the costs allocated to selling functions. See Valle Frio Cost Verification Report at page 28. Therefore, for these final results, we have revised the ISE percentage based on our verification findings. In addition, when we reviewed the G&A expenses which were apportioned between ISE and G&A, we found that they included labor-related expenses that were associated with selling functions and other expenses that were not associated with selling functions (i.e., property taxes, legal and professional fees). Therefore, we applied the revised ISE percentage to the POR labor-related expenses only. We then removed that amount from the total G&A expenses for the fiscal year to compute the G&A expense ratio. See Valle Frio and Framparque Cost Calculation Memorandum.

Comment 11: Wages and Professional Fees in Framparque's General and Administrative Expense Ratio

Petitioners' Arguments: The petitioners argue that the Department erroneously overstated Framparque's G&A ratio by including certain wages paid by Framparque in the G&A numerator, rather than in the cost of manufacturing ("COM") denominator. The petitioners claim that the wages relate to workers, rather than professional sales or administrative staff, and therefore should be included in COM.

Valle Frio's Arguments: Valle Frio and Framparque also argue that the Department should classify wages and professional fees as variable overhead ("VOH") costs, as opposed to G&A items. Framparque states that several G&A accounts are related to processing. Framparque claims the wages account includes the general manager's salary and that a small fraction is for secretarial support. Given that Framparque is a very small operation and because the general manager oversees both the farm operations and processing plant, Framparque believes the general manager's salary should be classified as a processing cost. Framparque also claims that the professional fees are outsourced plant cleaning and maintenance expenses, and a small amount is for external accounting services.

Department's Position: We disagree with both petitioners and respondents. Framparque included all variable overhead, G&A and financial expenses as variable overhead costs. In the Preliminary Results and in accordance with the Department's normal practice, we removed the non-production costs from the variable overhead cost calculation and instead computed G&A and financial expense ratios based on the fiscal year data. We classified the non-production costs (e.g., wages and professional fees) as G&A in the Preliminary Results based on the account title and the segregation of non-production and production expenses in Framparque's own financial accounting system. At verification, we confirmed that Framparque categorizes its production-related labor costs between type of fruit, growing, harvest and processing operations, while the wages account includes primarily the general manager's salary. We also learned at verification that the general manager is involved in the daily operations of the company, including overseeing the farming operations and production plant, as well as performing most, if not all, purchasing, selling, and administrative functions at Framparque. Based on our discussions, the general manager could not feasibly allocate his time or segregate his activities between production, selling and administrative functions nor did Framparque suggest an alternative allocation approach to do so. See Valle Frio Cost Verification Report at 27-29.

With respect to the professional fees account, Framparque's claim that these were outsourced plant cleaning and maintenance expenses is unsubstantiated by any evidence on the record. The Department finds that because the general manager's salary and professional fees are clearly excluded from the cost of sales figure in Framparque's normal books and records, and because there is no way to delineate these expenses between production and non-production-related activities (i.e., they relate to the general operations of the company as a whole), the wages and professional fees are appropriately classified as G&A.

Comment 12: Valle Frio's Production Quantities

Valle Frio's Arguments: Valle Frio states that the Department should use production quantities that were found at verification to calculate the company's conversion costs. Valle Frio claims that the Department found that the POR berry production quantity, specifically related to the production of strawberries, was greater than the production quantity Valle Frio used in its reported conversion costs. Valle Frio indicated that because the Department's verification procedures revealed that the finished production quantity of strawberries was higher than that reported by Valle Frio in its July 11, 2006 supplemental questionnaire response Exhibit SD-5, the verified production quantity should be applied in the conversion cost calculation for the final results.

Petitioners' Arguments: The petitioners did not comment on this issue.

Department's Position: We disagree with the respondents. Valle Frio based its reported production quantities on the production summary kept in the normal course of business at its processing plant. At verification, we tested the production summary by tracing the reported raspberry production quantities to daily production records and detailed monthly reports without exception. See Valle Frio Cost Verification Report at 17 and Verification Exhibit 9. Valle Frio did not have its daily and monthly production reports available for the other berries, thus, we were unable to trace the production volumes for boysenberries, strawberries and blackberries from the production summary to the production records using the same method we devised for raspberries.

However, Valle Frio provided an ad hoc alternative approach so that the Department could test the reasonableness of the information provided. Under this approach, we tested the production quantities for boysenberries, strawberries and blackberries in the production summary by comparing it with inventory records and sales worksheets to ensure such quantities were not overstated in the conversion cost calculations. Although there was some discrepancy between the production summary and the inventory and sales records, we confirmed that the production quantities were not overstated. See Valle Frio Cost Verification Report at 17. Further, despite the discrepancy between the production summary and the inventory and sales records, we find the production summary chart to be reliable because it was based on actual production activities at the processing plant. In sum, our verification procedures and findings revealed that the reported production quantities were reasonable based on the production records provided. As a result, we have not made any adjustments to production quantity with respect to Valle Frio in these final results.

Comment 13: General and Administrative Ratio Calculation

Valle Frio's Arguments: Valle Frio argues that the Department should add Valle Frio's G&A ratio to Framparque's G&A expenses, because Valle Frio claims it provides administrative and other services to Framparque.

Petitioners' Arguments: The petitioners did not comment on this issue.

Department's Position: We disagree with the respondent. We found that expenses, including exportation, freight, logistics and commission expenses, incurred by Valle Frio for Framparque's sales were reported as direct selling expenses for Framparque's third country market sales. While we agree Valle Frio plays a small administrative and supporting role in facilitating the logistical transfers of merchandise and offering selling assistance to Framparque, we note that Valle Frio captured these expenses by applying Valle Frio's, as opposed to Framparque's own ISE ratio, in the third country market database. We find that Framparque's G&A ratio reflects its overall operations, and that all other costs incurred by Valle Frio on behalf of Framparque were appropriately classified as direct and indirect selling expenses in the third country market sales database. Therefore, it is not appropriate to add Valle Frio's G&A rate to Framparque's G&A.

Comments Relating to Fruticola Olmue S.A.

Comment 14: Clerical Error Concerning Certain of Olmue's Credit Expenses

Olmue's Arguments: Olmue argues that the Department made a clerical error in calculating Olmue's credit expenses for the third-country and U.S. markets on sales that involved billing adjustments. Olmue's position is that this clerical error must be corrected. Specifically, Olmue states that to determine the credit expenses for the sales at issue, the Department intended to multiply the sum of the gross unit price and the billing adjustment by the relevant interest rate. However, according to Olmue, the Department's calculations show that it failed to place parentheses around the summation of the gross unit price and the billing adjustment variables. As a result, Olmue states that only the billing adjustment variable was multiplied by the interest rate, while the gross unit price was added to the credit expense in full. According to Olmue, this grossly overstates the adjustment for credit. Olmue states that once this clerical error is corrected, Olmue's margin drops to *de minimis*.

Petitioners' Arguments: The petitioners did not comment on this issue.

Department's Position: The Department agrees with Olmue that a clerical error was made and has modified the comparison market and margin programs by placing parentheses around the summation of the gross unit price and billing adjustment variables, as necessary. See Olmue Final Results Calculation Memorandum, dated Feb. 5, 2007.

Comments Relating to Vital Berry Marketing S.A.

Comment 15: Clerical Errors Made by VBM

VBM's Arguments: VBM asserts that the Department should correct certain clerical errors that VBM made in reporting its home market sales for the purposes of calculating the final results. VBM contends that for two home market sales, it inadvertently reported the wrong channel of distribution in its sales listing. Due to these coding errors, VBM claims that the entries in its home market sales listing for inland freight are incorrect and would result in an unjust result for VBM. VBM further asserts that the entries in its sales listings contradict the sales documentation it submitted to the Department for these two sales and, therefore, the Department should correct the inadvertent clerical errors. Finally, VBM asserts that it has met the criteria previously established by the Department in Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833 (Aug. 19, 1996) ("Flowers from Colombia") with regard to accepting clerical error corrections. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 65 FR 49219 (Aug. 11, 2000).

Petitioners' Arguments: In their rebuttal brief, the petitioners counter that VBM failed to meet certain criteria established in the Flowers from Colombia test. The petitioners also assert that they would be unfairly prejudiced were the Department to correct the clerical errors. The petitioners claim that their time and resources were limited due to the large number of respondents in this administrative review, and they have not focused attention on VBM because VBM has had an above *de minimis* margin. The petitioners argue that by making a correction at such a late stage in this proceeding, VBM could substantially impact the final results at a time when it is too late for petitioners to properly comment upon VBM's responses. Furthermore, given the significance of the changes, the petitioners question when VBM actually discovered the errors and subsequently alerted the Department. According to the petitioners, if the Department were to make the proposed corrections, it would create incentives for other respondents to manipulate antidumping duty proceedings at the last possible opportunity.

Department's Position: We note that as a result of the decision in Timken U.S. Corp. v. United States, 434 F.3d 1345 (Federal Circuit 2006)("Timken"), the six-prong test established under Flowers from Colombia is not the appropriate framework for addressing this issue. Therefore, we do not address the specific arguments made by the parties in this regard. However, consistent with Timken, we agree with VBM that the errors should be corrected.

In making its request for correction (see Letter from Cameron & Hornbostel, counsel to Vital Berry Marketing S.A. "*Clarification of Information on the Record*" dated October 12, 2006 ("Clarification Letter"), VBM raised questions about the accuracy of its earlier reported data. This led the Department to request further supporting documentation from VBM in order for the Department to make a fair analysis of VBM's clerical error assertion. This was submitted on November 27, 2006. After reviewing the additional information submitted by VBM, we determine that the evidence on the record in this proceeding supports VBM's claim that the two sales should be classified as channel "2" sales.

Finally, we disagree with the petitioners' contention that they would be unfairly prejudiced were the Department to correct the clerical errors. VBM submitted its original Clarification Letter to the

Department five days before the start of the briefing schedule and the petitioners commented on the request in their case brief. VBM's additional information was submitted a full seventy days before the final results deadline, thus affording the petitioners with sufficient time to comment. As explained above, the Department did not receive comments from the petitioners with respect to VBM's November 27, 2006, submission.

Comment 16: Clerical Error Made by the Department

VBM's Arguments: VBM notes that the SAS programming language used for the Preliminary Results contains an error with respect to the calculation of the Comparison Market Net Price ("CMNETPRI"). VBM points out that the Department's calculation of the CMNETPRI is incorrect by not converting warehousing expenses incurred in U.S. dollars to Chilean pesos. The correct equation, according to VBM, should convert warehousing expenses incurred from U.S. dollars to Chilean pesos.

Petitioners' Arguments: The petitioners did not comment on this issue.

Department's Position: We agree with VBM. For the correct calculation of the CMNETPRI, expenses incurred in U.S. dollars are converted to the appropriate home market currency, in this case, Chilean pesos. We have incorporated the change into the SAS programming language for the final results. See Final Results Calculation Memorandum for Vital Berry Marketing, S.A., dated February 5, 2007.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final results of this administrative review and the final weighted-average dumping margins for all firms reviewed in the Federal Register.

AGREE __________ DISAGREE __________

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David M. Spooner
Assistant Secretary
for Import Administration

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Date